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BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

DIVISION OF
OIL GAS & MINING

IN THE MATTER OF THE PERMIT
RENEWAL FOR THE CO-OP MINING
COMPANY'S BEAR CANYON MINE,
EMERY COUNTY, UTAH

*
* RESPONSE TO OBJECTIONS
* TO PERMIT RENEWAL
* CAUSE NO. ACT/015/025

Co-op Mining Company ("Co-op") has applied for a renewal of its mining and reclamation permit and in addition, has asked that its present permit area be expanded. Written objections to Co-op's application were filed by Castle Valley Special Services District, North Emery Water Users Association and Huntington-Cleveland Irrigation Company. By letter dated November 12, 1990, Huntington-Cleveland Irrigation District withdrew its protest.

An informal hearing was conducted by the Division of Oil, Gas & Mining on February 5, 1991, in Castle Dale, Utah, where interested parties were invited to comment concerning Co-op's application. In addition to the parties who had filed written protests, Huntington City appeared through its attorney and voiced objections and Huntington-Cleveland Irrigation District appeared through a representative and expressed concern about Co-op's proposed mining activities, notwithstanding that the District had withdrawn its protest.

At the conclusion of the hearing, the Director stated

that interested parties would have until 5:00 p.m. on February 15, 1991, in which to supplement the record and respond to the points presented at the hearing. The response time was subsequently extended to February 25, 1991, and then to March 11, 1991.

§40-10-9(4)(a) U.C.A., 1953, as amended, provides:

Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and the renewal shall be issued (but on application for renewal the burden shall be upon the opponents of renewal), subsequent to fulfillment of the public notice requirements of Sections 40-10-13 and 40-10-14 unless it is established that and written findings by the division are made that:

- (i) The terms and conditions of the existing permit are not being satisfactorily met;
- (ii) The present surface coal mining and reclamation operation is not in compliance with the approved plan;
- (iii) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;
- (iv) The operator has not provided evidence that the performance bond in effect for the operation will continued in full force and effect for any renewal requested in the application as well as ny additional bond the division might require pursuant to Section 40-10-15; or
- (v) Any additional revised or updated information required by the division has not been provided.

Although assertions were made at the hearing by representatives for North Emery Water Users and Huntington City

to the effect that Co-op has been cited for certain violations by the Division's inspectors, no documentation was provided. Co-op will agree that it has been cited in the past for certain violations of the Division's reclamation and operating regulations, but Co-op has performed diligently in abating all such violations and will continue to do so. Except for the references made to the violations, none of the objections contended that any of the five grounds cited in §40-10-9(4)(a) applied in the case of Co-op's application. Accordingly, as to the existing permit area, Co-op's permit should be renewed.

The review criteria respecting Co-op's application to increase its present permit area is somewhat different. §40-10-9(4)9b) provides:

If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to a new application under this chapter;...

Accordingly, Co-op's application regarding the proposed expanded permit area is subject to the requirements of §§40-10-10, 40-10-11, et seq. Co-op's application for renewal contains the necessary information required by those statutes, and in fact, Co-op has retained the services of an additional professional engineering firm (EarthFax Engineering, Inc.) and has committed to add to, modify and expand upon the information provided, in order to meet any legitimate objections or questions

raised by any of the opponents or the Division to Co-op's submittal.

The thrust of the objections raised by those appearing at the hearing concerned the hydrologic consequences of Co-op's proposed mining activities. The objections can be grouped into two general categories: (1) That Co-op's past and current mining activities have had some impact on Big Bear Spring and Birch Spring, and (2) That Co-op's proposal to mine farther north has a potential for greater impact on the two springs.

These objections are addressed more fully in the report of EarthFax Engineering, Inc., which is submitted herewith, but generally, it should be noted that the claimed impact from Co-op's past and present mining activities is simply not supported by the evidence presented. The general conclusion of Mr. Bryce Montgomery, Geologist hired by Castle Valley Special Service District and North Emery Water Users Association, as stated on page 7 of his report is

It is therefore my conclusion that the affect of the Co-op Bear Creek Mine and possibly the Trail Creek Mine operations have been relatively small in adversing the rights in the Big Bear Canyon Spring, both as to flow rate and contamination. The affect of a small reduction in recharge to the springs is estimated to be considerably less than the 25 percent allowance provided in paragraph 3, page 1 of the agreement between Co-op Mining Company and Huntington City, dated January 27, 1982.

In fact, Co-op would submit that the evidence shows that the effect of Co-op's mining on the spring flow has been

practically non-existent. Although the spring flow has decreased over the past few years while the precipitation has remained relatively constant, the precipitation has continued to be below "normal" levels, which in itself would account for the continued decrease in flow of the springs as the normal recharge areas for the springs continue to decrease because of the below normal precipitation. A comparison of flow rates of the Big Bear Spring and Birch Spring with other springs in the area which could not be affected by Co-op's mining activities will show generally the same pattern of decline, in relation to the same precipitation events.

Mr. Montgomery concluded that the three month abnormal increase in the flow of Birch Spring was "definitely associated with mining activity, and most probably within the caving Trail Canyon Mine" (page 8 of Montgomery report). Mr. Montgomery's conclusion is disputed in the report filed with the Division by Bill Malencik, dated November 1, 1989, and it appears to be a conclusion subject to serious unanswered questions. For instance, it seems highly unlikely that the flow could result from the mine that was caved and pillared over eight years previous to the increased flow. It seems unlikely that the flow would abruptly end and return to precisely normal after three months if an underground water flow were trapped in a reservoir and suddenly broke through, because the break, if there were one, would still be there and would allow continued flow, although in

a greatly diminished quantity. Also, if the water were from a trapped area in the old Trail Canyon mine, and if it contained oil and grease, as reported, the oil and grease would continue to show for the entire three months. The samples taken from Birch Spring showed oil and grease contaminants for only the first sample, likely a result of oil used to oil the lock on the gate securing the spring. Further, if the water were from the old workings, the filtration of the water through the ground to the spring would take out such impurities. In any event, the spring returned to normal after three months, both in quantity and quality of water and there is nothing but conjecture that the event will ever be repeated. Even if the event were to reoccur, there is no reason why reasonable steps could not be taken to make the water quality suitable for the users' needs and increase the availability of this badly needed resource, if the source can be identified.

With respect to Co-op's application to increase the permit area to allow for mining to the north, Mr. Montgomery concludes on page 9 of his report:

The proposed extension of coal mining within the 80 acre tract of the E/2 NW/4 Section 26, immediately east of Birch Spring could possibly adversely affect the spring...However, the most prominent groundwater transmission system in the area is the north-trending faults and joints, and most of the recharge to Birch Springs comes from the north through this system. Thus, the proposed northerly extension of the Bear Creek Mine into the N/2 of Sec. 14, T 16 S, R 7 E, could also cause a reduction in recharge to the Birch Springs by the intersection and diverting of ground

water away from its natural conduit system."

It must be emphasized that Mr. Montgomery's conclusions are qualified by the words "could possibly" and "could". Even these qualified conclusions are not supported by the report of Earthfax submitted herewith. I would submit that the Earthfax report appears to be based upon more extensive research and a more thorough analysis of all available information, and accordingly, is more credible. The Earthfax conclusion, that additional data is needed to arrive at any certainties, but that mining further north would in all liklihood have no significant impact upon the water quantity or quality of springs in the area, is also born out by the fact that mining in the area to date, has not impacted the springs. Mr. Montgomery suggests that there is a Blackhawk-Star Point aquifer underlying the coal seam being mined by Co-op, and the potentiometric surface of this aquifer "up dips" at a greater angle towards the north than does the coal seam. Thus, he concludes, the farther north the seam is mined, the greater the threat of intercepting this aquifer by mining activity. As concluded in the EarthFax study, if the aquifer does indeed exist, it would appear that it is well below not only the upper seam currently being mined, it is also well below the lower seam of coal, and the possibility of intercepting the aquifer by mining clear to the north of the proposed new area, would be almost non-existent in the upper seam, and extremely remote in the lower seam. The fact that Plateau Mining Co. is

mining the same seam as Co-op, in the same graben area, further north than the proposed expanded boundaries of Co-op's permit areas, without any apparent affect on Birch Spring or Big Bear Spring, certainly supports the conclusion of EarthFax and contradicts the conclusion of Mr. Montgomery in this regard.

The technical objections of North Emery Water Users Association and Castle Valley Special Service District, dealing with the lack of information in Co-op's plan and the lack of water monitoring, may have some merit, and Co-op's position is and always has been, that it will take all reasonable steps to assure that its mining operations will not interfere with or adversely affect the interests of its neighbors. If the Division deems that it would be appropriate to modify the maps, plates and other information submitted in its plan to provide more detail regarding Birch Spring and/or Big Bear Spring, Co-op Will agree to make such revisions. In fact, Co-op has retained the services of EarthFax to provide additional information regarding the hydrology and geology in the affected area, and will provide additional information if the Division deems that additional information is needed.

Co-op's opponents have also objected to the lack of monitoring of Birch Spring. Co-op has monitored Birch Spring as required by the Division, pursuant to its existing Plan. If the Division deems that additional monitoring would be appropriate, Co-op will agree to conduct additional monitoring. The primary

hindrance to such additional monitoring, is that the springs in question are fully enclosed and are accessibly only through a locked gate. Co-op has never been given access to these springs which would allow for any additional monitoring. Co-op appreciates the need for the water users to protect the cleanliness and integrity of its water sources and understands the need to restrict access to the springs. The best solution to the concerns of the water users, may be to provide that the water users themselves provide what additional monitoring the Division deems appropriate, where Co-op shares the cost of such additional monitoring, and where Co-op would have the right to challenge or re-sample the water if a negative impact is claimed by the users. In this way, the users would be able to maintain control over and access to their springs and would be the first to know if any impact were to occur.

Co-op is not adverse to meeting the objections of those filing objections. The report of EarthFax indicates that any negative impact from Co-op's proposed mining plan on the rights of those objecting is highly unlikely and proposes certain monitoring and testing procedures that would assure that the legitimate objections are met. Co-op is willing to take all reasonable steps to satisfy the Division and the users that its mining activities will not adversely effect the existing rights of others, and Co-op submits that the information and reports before the Division indicate that the mining which Co-op proposes

to do can be done without any adverse affect. Accordingly, Co-op's application to extend its permit and expand its permit area ought to be granted.

Respectfully submitted,



Carl E. Kingston
Attorney for Co-op Mining

CERTIFICATE OF MAILING

I hereby certify that I mailed copies of the foregoing Response to Objections to Permit Renewal and copies of the Hydrogeologic Evaluation report prepared by Earthfax Engineering, Inc., to the following, this 11 day of March, 1991, postage prepaid:

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